United States Department of Labor
Employees' Compensation Appeals Board

H.J., Appellant	)	
and	)	
NATIONAL AERONAUTICS & SPACE ADMINISTRATION, SPACEPORT ENGINEERING & TECHNOLOGY, KENNEDY SPACE CENTER, FL, Employer	)	**Docket No. 06-1402** **Issued: October 24, 2006**

Appearances:
Ronald S. Webster, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 6, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 15, 2005 and April 26, 2006 merit decisions terminating her compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant had residuals of her accepted employment injuries after October 2, 2004.

FACTUAL HISTORY

On May 2, 2003 appellant, then a 51-year-old operations specialist, filed an occupational disease claim alleging that she sustained neck and upper extremity conditions due to typing on her computer, moving materials and engaging in other repetitive motions at work. Appellant

began working in a light-duty position, but stopped work on June 19, 2003. She returned to light-duty work in September 2004 for 12 hours per week and retired from the employing establishment effective April 1, 2005 on disability retirement.

The Office accepted that appellant sustained bilateral carpal tunnel syndrome, bilateral lateral epicondylitis and aggravation of cervical spondylosis.[1] It paid appropriate compensation for periods of disability. On September 17, 2003 appellant underwent a left carpal tunnel release that was authorized by the Office.

In a report dated November 3, 2003, Dr. Robert Aranibar, an attending Board-certified anesthesiologist, reported his findings on examination and diagnosed cervical spondylosis. Clinical presentation revealed a mild cervical radiculopathy without gross findings of examination and a previous history of left-sided carpal tunnel syndrome with improvement post carpal tunnel release.

On June 15, 2004 Dr. Richard E. Gayles, an attending Board-certified anesthesiologist, performed a radio-frequency ablation on appellant's neck bilaterally at C3-4. In a report dated July 12, 2004, Dr. Gayles stated that appellant reported a reduction in her left arm pain but continued to experience neck pain and headaches. He diagnosed cervical spondylosis, refractory to conservative treatment and cervicogenic headaches. In a note dated July 16, 2004, Dr. Gayles stated that appellant could lift up to 10 pounds and perform part-time sedentary work.

The Office referred appellant to David B. Lotman, a Board-certified orthopedic surgeon, for further evaluation of her medical condition. In a report dated August 12, 2004, Dr. Lotman described appellant's employment injuries and discussed her history of medical treatment. He stated that examination of the cervical spine revealed normal cervical lordosis with mild midline tenderness and slight paraspinous discomfort without associated spasm. Dr. Lotman indicated that there was no pain or spasm in the periscapular musculature, cervical trapezius or anterior cervical triangle. Evaluation of the upper extremities revealed normal and symmetric strength and sensation. Dr. Lotman indicated that appellant exhibited irregular responses on Tinel's sign, Phalen's sign and vibratory sense perception testing that had no known anatomic explanation.

Dr. Lotman concluded that appellant had returned to her preinjury status and diagnosed cervical spondylosis with symptom magnification, noting that there were no physical findings to support this condition but that diagnostic testing showed a small annular bulge at C6. He found that the employment-related aggravation of appellant's cervical spondylosis was temporary and had since resolved. There was no indication that appellant continued to have bilateral carpal tunnel syndrome or lateral epicondylitis. Dr. Lotman noted that appellant had many subjective complaints that were not supported by objective findings and indicated that her continuing problems and need for work restrictions were due to her preexisting cervical spondylosis.

In a report dated August 16, 2004, Dr. Gayles stated that appellant had exhausted all conservative treatment for her neck problems. He indicated that she should be referred to a Board-certified surgeon to determine whether she was a candidate for surgery.

[1] The findings of May 30, 2003 magnetic resonance imaging testing showed cervical spondylosis extending from C2-3 through C6-7 with osteophytes possibly encroaching on the right C5 nerve root.

By notice dated August 26, 2004, the Office advised appellant of its proposed termination of her compensation. The Office found that the weight of the medical evidence regarding this matter rested with the opinion of Dr. Lotman. The Office provided appellant 20 days to respond to the proposed termination, but she did not respond within the allotted period.

By decision dated September 28, 2004, the Office finalized the termination of appellant's compensation effective October 2, 2004, finding that she had no residuals of her employment injury after that date.

Appellant submitted an October 8, 2004 report in which Dr. Gary Weiss, an attending Board-certified neurologist, diagnosed bulging C5-6 disc with mild preexisting spondylitis, status post left carpal tunnel release with good result, and mild right carpal tunnel syndrome. Dr. Weiss did not identify any recent examination or diagnostic testing findings to support his finding of mild right carpal tunnel syndrome.

In a report dated November 29, 2004, Dr. Gayles diagnosed cervical spondylosis, cervical radiculopathy, and secondary myofascial pain and indicated that appellant could perform part-time work.[2]

In a report dated March 14, 2005, Dr. Weiss indicated that March 14, 2005 electromyogram (EMG) and nerve conduction velocity (NCV) testing showed that appellant had bilateral carpal tunnel syndrome.[3] He diagnosed bulging C5-6 disc with mild preexisting spondylitis, recurrent left carpal tunnel release, status post release, and mild right carpal tunnel syndrome.

By decision dated and finalized December 15, 2005, an Office hearing representative affirmed the September 28, 2004 decision.

In a September 23, 2005 report, Dr. Gayles diagnosed lumbar multilevel disc disease with L1-2, L2-3, and L4-5 protrusions, foraminal stenosis of L4-5, and cervical spondylosis. In a report dated February 6, 2006, Dr. Gayles diagnosed cervical spondylosis and myofascial pain secondary to the cervical spondylosis.

In a report dated February 13, 2006, Dr. Gayles stated that diagnostic testing supported that appellant still had carpal tunnel syndrome, foraminal stenosis and spondylitic cervical changes which were related to her accepted employment injuries. With respect to carpal tunnel syndrome, he noted that appellant had surgery on the left "with a relatively successful result" but that her right side still hurt and had not been operated on. Dr. Gayles stated that appellant did not have not have significant pain in the affected areas prior to "exacerbating her condition due to her work activities." He indicated that she had "preexisting findings that are progressive in nature" which he suggested had been aggravated by "specific physical activities." Appellant would have a difficult time performing her regular work and Dr. Gayles stated that there was no reason to conclude that her condition had "magically returned to preinjury status."

[2] In a March 21, 2003 report, Dr. Gayles indicated that appellant had carpal tunnel syndrome.

[3] The March 14, 2005 test results were attached.

By decision dated April 26, 2006, the Office denied modification of the December 15, 2005 decision.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.[4] The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[5] After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had a employment-related disability which continued after termination of compensation benefits.[6]

ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome, bilateral lateral epicondylitis and aggravation of cervical spondylosis. It terminated her compensation effective October 2, 2004 based on the opinion of Dr. Lotman, a Board-certified orthopedic surgeon, who served as an Office referral physician.

The Board finds that the weight of the medical evidence rests with the well-rationalized opinion of Dr. Lotman. The August 12, 2004 report of Dr. Lotman established that appellant had no disability due to her employment injuries after October 2, 2004.

In an August 12, 2004 report, Dr. Lotman stated that examination of appellant's cervical spine revealed normal cervical lordosis with mild midline tenderness and slight paraspinous discomfort without associated spasm, but that there was no pain or spasm in the periscapular musculature, cervical trapezius or anterior cervical triangle. He stated that evaluation of the upper extremities revealed normal and symmetric strength and sensation and indicated that appellant exhibited irregular responses on Tinel's sign, Phalen's sign and vibratory sense perception testing that had no known anatomic explanation. He concluded that appellant had returned to her preinjury status and diagnosed cervical spondylosis with symptom magnification noting that there were no physical findings to support this condition but that diagnostic testing showed a small annular bulge at C6.

The Board has carefully reviewed the opinion of Dr. Lotman and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Lotman's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical

[4] *Charles E. Minniss,* 40 ECAB 708, 716 (1989); *Vivien L. Minor,* 37 ECAB 541, 546 (1986).

[5] *Id.*

[6] *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

evidence.[7] Dr. Lotman provided medical rationale for his opinion by explaining that the employment-related aggravation of appellant's cervical spondylosis was temporary and had since resolved.[8] He further explained that appellant had many subjective complaints that were not supported by objective findings and indicated that her continuing problems and need for work restrictions were due to her preexisting cervical spondylosis.

The Board notes that there are very few other medical reports in the record from around the time of the October 2004 termination of appellant's compensation. In a report dated July 12, 2004, Dr. Gayles, an attending Board-certified anesthesiologist, diagnosed cervical spondylosis, refractory to conservative treatment and cervicogenic headaches. In a report dated August 16, 2004, he stated that appellant had exhausted all conservative treatment for her neck problems and indicated that she should be referred to a Board-certified surgeon to determine whether she is a candidate for surgery. Dr. Gayles did not provide any explanation addressing how appellant's continuing problems were employment related.

After the Office's September 28, 2004 decision terminating appellant's compensation effective October 2, 2004, appellant submitted additional medical evidence contending that she was entitled to compensation after October 2, 2004 due to residuals of her employment injuries. The burden shifted to appellant to establish that she is entitled to compensation after October 2, 2004. The Board has reviewed the additional evidence submitted by appellant and notes that it is not of sufficient probative value to establish that she had residuals of her employment injuries after October 2, 2004.

In a February 13, 2006 report, Dr. Gayles stated that diagnostic testing supported that she still had carpal tunnel syndrome, foraminal stenosis and spondylitic cervical changes which were related to her accepted employment injuries. With respect to carpal tunnel syndrome, he noted that appellant had surgery on the left "with a relatively successful result" but that her right side still hurt and had not been operated on. Dr. Gayles stated that appellant did not have not have significant pain in the affected areas prior to "exacerbating her condition due to her work activities" and indicated that she had "preexisting findings that are progressive in nature" which he suggested had been aggravated by "specific physical activities."

This report, however, is of limited probative value on the relevant issue of the present case. Dr. Gayles did not provide adequate medical rationale in support of his conclusion on causal relationship.[9] He did not describe the employment injuries in any detail and explain the medical process through which they continued to cause disability or the need for medical treatment. The mere fact that appellant remained symptomatic would not show that the continuing symptoms were

[7] *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

[8] Dr. Lotman did not provide any indication that appellant continued to have bilateral carpal tunnel syndrome or lateral epicondylitis at the time of his evaluation and his findings do not otherwise support the existence of these conditions.

[9] *See Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

employment related.[10] With respect to appellant's upper extremity condition, the Board notes that there were no clear examination or diagnostic testing results which showed that appellant had this condition between the time of the October 2004 termination and March 2005 when diagnostic testing results confirmed such a condition.[11] Dr. Gayles did not explain why the carpal tunnel syndrome condition which was found on testing in March 2005 was related to the condition which was originally accepted.[12] Appellant has not filed a claim for a newly acquired carpal tunnel syndrome condition and the medical evidence does not support the finding of such a new employment-related condition. With respect to appellant's cervical condition, Dr. Gayles did not explain why appellant's cervical problems were not due to the natural progression of her preexisting degenerative condition.

CONCLUSION

The Board finds that appellant did not have residuals of her accepted employment injuries after October 2, 2004.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' April 26, 2006 and December 15, 2005 decisions are affirmed.

Issued: October 24, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[10] *See William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[11] Dr. Weiss, an attending neurologist, reported these diagnostic testing results in a report dated March 14, 2005, but he did not provide any opinion that the carpal tunnel syndrome condition was related to the originally accepted employment injuries. None of the other reports that Dr. Gayles submitted after the October 2004 termination indicated that appellant's continuing problems were employment related.

[12] None of the medical evidence made any mention of the bilateral lateral epicondylitis which had previously been accepted.